

1. In the light of recent events, analyse how the relationship between Parliament and the Judiciary has evolved over the years. **(250 Words)**

Answer:

Background:-

- Under the Constitution, the primary function of the *legislature* is to make law, that of the executive is to execute law and that of the *judiciary* is to enforce the law. However the relationship evolved over the years.

Relationship between Parliament and judiciary:-

- The Constitution provides for a separation of powers between Parliament and the Judiciary by demarcating their roles and responsibilities. It also lays down various ways by which
- The Judiciary may guard against the unconstitutional exercise of power by Parliament

1. Judiciary's Responsibilities and Powers :-

- The higher judiciary also has the power to strike down laws of Parliament and actions of the Executive as invalid, if they violate the Constitution. This is called the power of judicial review.
- For example, a law may be declared as invalid if it violates the fundamental rights guaranteed by the Constitution. The Supreme Court exercised its power of judicial review and struck down this provision as unconstitutional. It held that Section 66A violates Article 19(1)(a) of the Constitution that protects freedom of speech and expression.

2. Judicial independence:-

- The Constitution creates a structure to protect judges from being influenced by Parliament and the Executive.
- For example, the conduct of a Supreme Court or High Court judge cannot be discussed in Parliament unless it is for the purpose of presenting a motion for his removal.
- **Parliament may legislate on or act as a check in matters related to the Judiciary.**

1. Powers:

- Parliament enacts laws, exercises oversight over the Executive, sanctions government expenditure and represents citizens. It also has the power to amend the Constitution

2. Immunity from court proceedings:

- To grant Parliament autonomy in its functioning, the Constitution guarantees certain protections to parliamentary proceedings and those participating in them.
- For example, Members of Parliament (MPs) enjoy immunity from court proceedings for anything that they say or any vote that they make in Parliament.

- **However over the years the relationship transformed :-**

- Limitations on Parliament's power to amend the Constitution
 - The Supreme Court has held that Parliament cannot amend the 'basic structure' of the Constitution in the Keshavananda Bharti case. This 'basic structure' principle is not expressly mentioned in the Constitution.
 - Experts uphold this interpretation as it is a protection against excessive use by a government with a large majority; for example, this limitation prevents a government holding substantial majority from extending the term of Parliament indefinitely.
- **Law making by judiciary:-**

- The Judiciary has on occasion laid down the law or directed that laws be made. For example, in Vishaka vs State of Rajasthan, the Supreme Court framed guidelines on how sexual harassment at the workplace needs to be addressed by employers.
- The Judiciary has generally issued such directions under Articles 32 and 142 of the Constitution. These provisions empower the Judiciary to protect fundamental rights and issue any order to do complete justice.
- One of the important instances of application by the Supreme Court of Article 142 was in the Union Carbide case relating to the victims of the Bhopal gas tragedy where the Court felt a need to deviate from existing law to bring relief to the thousands of persons affected by the gas leak.
- **Judicial Review of Parliamentary Privileges and Proceedings**
 - In several decisions, the courts have asserted their power to exercise judicial review over parliamentary privileges and proceedings .
 - For example, the Supreme Court has held that the Speaker's decision to disqualify an MP for defection is subject to judicial review as the Speaker is discharging an adjudicatory function.
- **Power to appoint judges**
 - According to the Constitution the President must appoint judges of the Supreme Court and High Courts after consultation with the Chief Justice of India (CJI) and other judges of the Supreme Court and the High Courts
 - The term 'consultation' has been interpreted by the Supreme Court to mean that judicial appointments recommended by a collegium of judges will be binding on the President (i.e. Executive).
 - In 2014, Parliament enacted National Judicial Appointments Commission (NJAC) Act, 2014 to replace the collegium with an independent commission. Subsequently the Supreme Court struck down the two laws as unconstitutional, and re-instated the collegium process.
- Experts criticise judiciary that it is on legislative space based on the judgements like 2G judgment on auctions, mining bans, setting up of SIT on black money, The ban on the sale of alcohol along national and State highways etc) but counter argument also states that judiciary had to intervene as legislature has been complacent.

Conclusion :-

- The balance between the two organs need to be maintained and the doctrine of separation of powers, which is part of the basic structure of the Constitution need to be strongly adhered to.

PRACTICE QUESTIONS

Answer the following Questions

1. According to a recent UN report, the average age of death for Dalit women in India is 39.5. Critically analyse the economic and social stresses experienced by Dalit women in India and solutions needed to empower them. (250 Words)
2. In the light of inactive SAARC and strained relationship between India and Pakistan, can China become a part of the solution, rather than being perceived as a part of the India- Pakistan problem? Analyse. (250 Words)